

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

VEACH OIL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 92-202
) (Variance)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On December 7, 1992, Veach Oil filed a petition for variance from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and from 35 Ill. Adm. Code 602.106(a), Restricted Status. The petition asserts that "the purpose of this variance request is to allow the extension of the present water distribution system of the Lake of Egypt Water District which is necessary to enable it to serve commercial property located adjacent to the intersection of Illinois Route 148 with Interstate 57 in extreme southern Williamson County, Illinois which property is owned by the petitioner". Although the petition states that "the petitioner is informed and believes that the Lake of Egypt Water District (District) supports this petition for variance", the District has not been made a party to this action. Veach has waived hearing in this matter.

The Board finds that this petition is deficient. Section 103.121(c) of the Board's procedural rules provides that:

If a complete determination of a controversy cannot be had without the presence of other parties, the Board or Hearing Officer shall order them to be brought in. If a person not a party has an interest which the order may affect, the Board or Hearing Officer may order him to be made a party. Service of process and subsequent pleadings shall be had as directed by Section 103.123.

See also 35 Ill. Adm. Code 103.141. The Board cannot make a "complete determination" in this matter unless the District is brought into this action. The District is the only entity which can verify its present status and future plans; this petition does not even state why the supply is on restricted status. Additionally, in cases seeking variance from restricted status, variances granted by the Board typically include conditions which must be complied with by the water supply. The Board cannot

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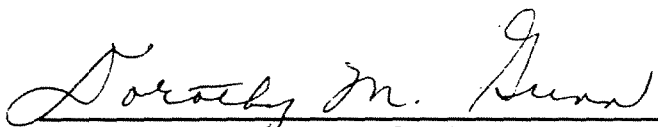
order the District to take any action unless it is brought into this case as a party.

Accordingly, the Board orders Veach to file an amended petition joining the District as a party to this action pursuant to Section 103.121(c) and 103.141. Veach may join the District as a petitioner, if it believes that the District supports the petition, or as a respondent if it does not. Veach shall make service of the petition upon the District pursuant to Section 103.123(a). If the District is joined as a petitioner, the petition must contain either a statement that the District requests a hearing, or that the District waives hearing. If the District waives hearing, the petition must contain an affidavit by the District attesting to the truth of the facts alleged. See 35 Ill. Adm. Code 104.124.

If an amended petition curing this deficiency is not filed within 45 days of the date of this Order, this petition will be subject to dismissal. The filing of an amended petition will restart the Board's decision timeclock pursuant to Section 38 of the Environmental Protection Act.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of December, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

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